APPENDIX

APPENDIX A

IN THE CRIMINAL COURT OF RECORD, in and for Dade County, State of Florida, October Term, 1966.

THE STATE OF FLORIDA

vs.

BERNIE LUDWIG

INFORMATION FOR BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY

(SIX COUNTS)

Filed Dec. 5, 1966

J. F. McCracken, Clerk JT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

Miscellaneous Silverware

the property of MR. AND MRS. FRANK GODSEY, which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

COUNT TWO

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

One (1) Cameo Broach

the property of MRS. NATHAN ESTROFF, which said property the defendant

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well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

COUNT THREE

And RICHARD E. GERSTEIN, STATE ATTORNEY of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

Eighty-Four (84) Pieces of Silverware,

the property of WILLIAM HARGRAVE, which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

COUNT FOUR

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

One (1) Fur Coat;
One (1) Fur Jacket and
One (1) Fur Stole,

the property of MARGARET C. PETERSEN, which said property the defendant

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well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

COUNT FIVE

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

One (1) Gray Fur Piece and Miscellaneous Silverware,

the property of MRS. JESS GILLUM, which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes, contrary to the form of the Statute in such cases made and provided and against the peace and dignity of the State of Florida.

COUNT SIX

And RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, prosecuting for the State of Florida, in the County of Dade, under oath, further information makes that BERNIE LUDWIG on the 13th day of March, 1966, in the County and State aforesaid, did unlawfully, knowingly and feloniously buy, receive or aid in the concealment of certain stolen property, to-wit:

One (1) Fur Stole

the property of MRS. J. M. WALKER, JR., which said property the defendant well knew to have been stolen, in violation of 811.16 Florida Statutes,

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contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

/s/ RICHARD E. GERSTEIN
State Attorney, Eleventh Judicial
Circuit of Florida

STATE OF FLORIDA:

COUNTY OF DADE:

Personally appeared before me, RICHARD E. GERSTEIN, State Attorney of the Eleventh Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth in the within Information are based upon facts that have been sworn to as true, and which facts, if true, would constitute the offenses therein charged.

/s/ RICHARD E. GERSTEIN
State Attorney, Eleventh Judicial
Circuit of Florida

Sworn to and subscribed before me this 29th day of November, 1966.

J. F. McCracken, Clerk
Criminal Court of Record,
Dade County, Florida

By: /s/ B. KAMBAS, D.C.

(SEAL, CRIMINAL COURT OF RECORD)

Defendant BERNIE LUDWIG, arraigned in open Court on the within Information and pleaded .....

.....

Deputy Clerk, Criminal Court of
Record, Dade County, Florida

App. 6

Case No. 66-3086 JT

Criminal Court of Record

DADE COUNTY, FLORIDA

THE STATE OF FLORIDA

vs.

BERNIE LUDWIG

INFORMATION FOR BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY

(SIX COUNTS)

WITNESSES FOR THE STATE

1. Frank Godsey and
2. Mrs. Frank Godsey,
   311 Cordova Blvd.
   St. Petersburg, Fla.
3. Joe Fernandez, PSD
4. James Coon and
5. Herbert Kuppersmith, PSD

CDE/hht
11/29/66
Case No. 66-3086 JT

JAN. 16, 1967

WAIVED TRIAL BY JURY

/s/ BERNIE LUDWIG

APPENDIX B

IN THE CRIMINAL COURT OF RECORD IN AND FOR DADE COUNTY, FLORIDA

NO. 66-3086

THE STATE OF FLORIDA

vs.

BERNIE LUDWIG,

MOTION TO QUASH AND SUPPRESS

Filed Dec. 21, 1966

J. F. McCracken, Clerk K

The Defendant, BERNIE LUDWIG, would show unto this Court that certain articles, goods and paraphernalia were taken by Dade County Police Officers from premises under the control of the Defendant under purported authority of a purported search warrant in violation of this Defendant's rights under Sections 12 and 22 of the Declaration of Rights, Constitution of the State of Florida, of the 4th, 5th and 14th Amendments to the Constitution of the United States.

1. That the purported affidavit and said purported search warrant failed to show probable cause and no probable cause for the issuance of either existed.

2. That said purported affidavit and search warrant are insufficient in law and in fact.

3. That said purported search warrant fails to show jurisdiction on its face.

4. That said purported search warrant is defective in describing the property sought to be seized.

5. That the property, goods, and paraphernalia taken was the result of an illegal, unauthorized and unwarranted search and seizure.

6. That the seizure of goods and paraphernalia under the purported use of a purported search warrant was unauthorized and illegal so as to constitute "blanket" warrant and an illegal general search.

7. That said purported affidavit and purported search warrant failed to comply with Florida Statutes Annotated, Sections 933.07 and 933.18.

8. That the execution of said purported search warrant by Police Officers was illegal and improper.

9. That the execution of said purported search warrant, the actions of the Police Officers under the purported search warrant and the abuses thereunder.

WHEREFORE, the premises considered, the Defendant moves that this Court quash the purported search warrant and suppress the use of any good, articles, paraphernalia or any other matter of any type so seized, as evidence, against the Defendant.

/s/ BERNIE LUDWIG
BERNIE LUDWIG

SWORN TO AND SUBSCRIBED before me this the 20 day of December, 1966.

/s/ JO CAHOON
NOTARY PUBLIC, State of Florida

NOTARY PUBLIC, STATE of FLORIDA at LARGE
MY COMMISSION EXPIRES FEB. 15, 1970
BONDED THRU MAYNARD BONDING AGENCY

(NOTARIAL SEAL AFFIXED)

I HEREBY CERTIFY that a true copy of the foregoing Motion to Quash and Suppress was mailed to the Office of Richard E. Gerstein, State Attorney, 6th Floor, Metropolitan Justice Building, Miami, Florida, this the 20 day of DECEMBER, 1966.

/s/ STEPHEN F. BAZZANO
STEPHEN F. BAZZANO
Attorney for Defendant
906 Ainsley Building
Miami, Florida

APPENDIX C

(And on April 14, 1967, the Clerk of the Court entered in Criminal Court of Record Minute Book No. 241, on Page 101, the following minutes, to-wit:)

DIVISION "A" April 14, 1967

STATE OF FLORIDA

vs.

BERNIE LUDWIG

#66-3086

BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY (SIX COUNTS)

Charles D. Edelstein, Assistant State Attorney.
Gerald Kogan, Counsel for the Defendant.
Reported by Harvey Hartman.

All the witnesses and the defendant were sworn.

State's Witnesses:

1. Joseph Fernandez

Gerald Kogan, Counsel for the Defendant, orally presented a Motion to Quash the Affidavit for Search Warrant, which Motion the Court denied.

Counsel for the Defendant orally presented a Motion to Quash the Search Warrant, which Motion the Court denied.

The Court admitted into evidence the following items:

Affidavit for Search Warrant
and Search Warrant ..... State's Exhibit #1

Charles D. Edelstein, Assistant State Attorney, orally presented a Motion to Consolidate the Instant Case with Case No. 66-2954 for Trial, which Motion the Court denied.

Counsel for the Defendant orally presented a Motion to Suppress the Evidence, upon which Motion the Court reserved ruling.

APPENDIX D

(And on October 26, 1967, the Clerk of the Court entered in Criminal Court of Record Minute Book No. 262, on Page 452, the following minutes, to-wit:)

DIVISION "A" October 26, 1967

STATE OF FLORIDA

vs.

BERNIE LUDWIG

#66-3086

BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY (SIX COUNTS)

Charles David Edelstein, Assistant State Attorney.
Gerald Kogan, Counsel for the Defendant.
Reported by Harvey Hartman.

The Court denied the Defendant's pending Motion to Suppress.

APPENDIX E

#66-3086 & 66-3087

AFFIDAVIT FOR SEARCH WARRANT

Filed Mar. 22, 1966

J. F. McCracken, Clerk

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

Before me, JAMES LAWRENCE KING, one of the Circuit Judges of the 11th Judicial Circuit of Florida, personally appeared JOSEPH FERNANDEZ, Deputy Sheriff, Dade County, Florida, who first being duly cautioned and sworn according to law, upon his oath deposes and says that he, JOSEPH FERNANDEZ, The Affiant, has received ~~inform~~information from Antonio P. Guerra, through Inspector Bland of the Tampa, Florida, Police Department, that stolen jewelry, that is to say, jewelry stolen from the residence of Kent McKinley, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one ruby emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry, is being stored on the premises known and described as Apartment #113 located within a three story apartment building, color off-white with red barrel

tile roof. This apartment building is located at 333 University Drive, Coral Gables, Dade County, Florida; and that Apartment #113 is located on the first floor of the above described apartment building. The above described apartment is listed on the U. S. Postal Office Mail Box in the names of H. L. Sadacca and A. V. Sadacca. The above described apartment building is also known as the San Sebastian Apts.

The Affiant further states that Inspector Bland contacted him on March 13, 1966 and stated that Antonio P. Guerra had admitted his participation in the above mentioned theft. The Affiant further states that Inspector Bland was told by Guerra that Guerra had traveled to the above mentioned premises in Coral Gables, Florida and that in his presence, in Apartment #113, the jewelry stolen from McKinley was sold to a person known only to Guerra as Bernard Ludwig for $23,000.

The Affiant further states that Bland was told by Guerra that the resident of this apartment is a person known only to him as Ben and that Ben is a partner of Bernard Ludwig in the operation of the Pan Am Jewelry Exchange, Miami, Florida.

The Affiant has good reason to believe, and does believe, that stolen jewelry, that is to say, jewelry stolen from the residence of Kent McKinley, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round dia-

mond, one ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry, will be found on the aforesaid premises and the aforesaid premises are being unlawfully used for the purpose of storing stolen jewelry.

Wherefore, Affiant prays that a search warrant be issued according to law.

/s/ JOSEPH F. FERNANDEZ
Affiant

Sworn to and subscribed before me this 13 day of March, A.D. 1966.

/s/ JAMES LAWRENCE KING
Judge of the Circuit Court
of the 11th Judicial Circuit
of Florida in and for the
County of Dade.

APPENDIX F

SEARCH WARRANT

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

IN THE NAME OF THE STATE OF FLORIDA:

To: The Sheriff, Deputy Sheriffs or Constables of Dade County, Florida, or any police officer of Coral Gables, Dade County, Florida.

WHEREAS, **Joseph Fernandez, Deputy Sheriff, Dade County Sheriff's Office** has this day made oath before me that he has probable cause to believe, and does believe, that a certain premises known or described as **Apartment #113 located within a three story apartment building, color off-white with red barrel tile roof. This apartment building is located at 333 University Drive, Coral Gables, Dade County, Florida; and that Apartment #113 is located on the first floor of the above described apartment building. The above described apartment is listed on the U.S. Postal Office Mail Box in the names of H. L. SADACCA and A. V. SADACCA. The above described apartment building is also known as the San Sebastian Apts.** The above described apartment has been and is being used by a person, known only to the Affiant as **Ben** for the purpose of storing stolen jewelry, that is to say, **jewelry stolen from the residence of KENT McKINLEY, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one**

twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry, contrary to the laws of the State of Florida.

THESE PRESENTS, THEREFORE, ARE TO COMMAND YOU, with proper and necessary assistance, either in the day-time or in the night-time, or on Sunday within ten days of the issuance hereof, to search said premises known or described as **Apartment #113 located within a three story apartment building, color off-white with red barrel tile roof. This apartment building is located at 333 University Drive, Coral Gables, Dade County, Florida; and that Apartment #113 is located on the first floor of the above described apartment building. The above described apartment is listed on the U. S. Postal Office Mail Box in the names of H. L. SADACCA and A. V. SADACCA. The above described apartment building is also known as the San Sebastian Apts.** AND THE PERSON OR ALL PERSONS THEREIN WHO SHALL BE CONNECTED WITH, OR SUSPECTED OF BEING CONNECTED WITH MAINTAINING OF SUCH STOLEN JEWELRY, THAT IS TO SAY, **jewelry stolen from the residence of KENT McKINLEY, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one**

ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry, and if the same, or any part thereof, shall be found, upon said search, you are to bring said goods or property so found, and also the body of all persons found therein connected with said stolen jewelry, that is to say, **jewelry stolen from the residence of KENT McKINLEY, 203 South Washington Drive, Sarasota, Florida, on March 9, 1966 and described as one diamond earring, Tiffany, one sapphire, diamond and platinum flexible bracelet, one twin pear shaped ring containing one pink diamond and one white diamond, two sapphire and diamond clips containing forty sapphires and thirty baguette diamonds-one round diamond, one ruby and diamond bracelet, diamond and emerald ring containing two diamonds and one emerald, one necklace containing one aquamarine stone weighing 24.53 carats and other assorted jewelry,** before a Court of competent jurisdiction to be dealt with according to law.

GIVEN UNDER MY HAND this 13 day of March, A.D., 1966.

/s/ JAMES LAWRENCE KING
Judge of the Circuit Court of
the 11th Judicial Circuit of
Florida, in and for the County
of Dade.

APPENDIX G

STATE OF FLORIDA

vs.

BERNIE LUDWIG

Case No. 66-3086

CHARGE, BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY, etc.

JUDGMENT

It appearing unto this Court that you, Bernie Ludwig, have been regularly tried and convicted of unlawfully buying, receiving or aiding in the concealment of stolen property well knowing the same to be stolen, as set forth in Counts One, Two, Three, Five and Six of the Information

IT IS THEREFORE THE JUDGMENT of the law and it is hereby adjudged that you are and stand convicted of the offenses as above set forth.

What have you to say why sentence should not now be imposed upon you?

Saying nothing that could influence the Court in its decision.

SENTENCE

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that you be imprisoned by confinement at

hard labor in the STATE PENITENTIARY for a term of Three (3) years.

DONE AND ORDERED in open Court at Miami, Dade County, Florida, this 5 day of January A. D. 1968.

/s/ JACK M. TURNER
Judge.

Filed this 5 day of January
A. D. 1968 and recorded in Criminal Court of Record, Minutes No. 269 on Page 351

J. F. McCracken, Clerk

By: MARY KRISSEL DIV. A__/__B____C____D____
Deputy Clerk

APPENDIX H

IN THE CRIMINAL COURT OF RECORD IN AND FOR DADE COUNTY, FLORIDA.

NO. 66-3086

STATE OF FLORIDA,

Plaintiff,

vs.

BERNIE LUDWIG,

Defendant.

MOTION FOR NEW TRIAL

COMES NOW the Defendant, BERNIE LUDWIG, by and through his undersigned attorney, and moves this Honorable Court for a new trial on the following grounds:

1. That the verdict of the Court is contrary to law.

2. That the verdict of the Court is contrary to the evidence.

3. That the verdict of the Court is contrary to both, the law and the evidence.

4. That the Court erred in denying the Defendant's Motion to Suppress all evidence seized from the residence known as Apartment 113 of the San Sebastian Apartments, 333 University Drive, Coral Gables, Florida on March 14, 1966.

5. That the Court erred in failing to grant the Defendant's Motion to Quash Search Warrant issued in this cause on March 13, 1966 by the Honorable James Lawrence King, Judge of the Circuit Court in and for Dade County, Florida.

6. That the Court erred in admitting into evidence the property taken from Apartment 113, San Sebastian Apartments, 333 University Drive, Coral Gables, Florida pursuant to the aforementioned search warrant issued by Judge King.

7. That the Court erred in failing to grant the Defendant's Motion for a Directed Verdict at the conclusion of the State's case.

8. That the Court erred in refusing to grant the Defendant's Motion for a Directed Verdict at the conclusion of all the evidence.

GERALD KOGAN
Attorney for Defendant
1201 Biscayne Building
Miami, Florida 33130

I HEREBY CERTIFY that a copy of the foregoing Motion for New Trial was mailed to RICHARD E. G[illegible]STEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida this ____ day of October, 1967.

GERALD KOGAN

APPENDIX I

CLERKS MINUTES

#66-3086

STATE OF FLORIDA
vs.
BERNIE LUDWIG

BUYING, RECEIVING OR CONCEALING STOLEN PROPERTY (SIX COUNTS)

Charles D. Edelstein, Assistant State Attorney.
Gerald Kogan, Counsel for the Defendant.
Reported by Sylvia Fierman.

Continued on next page

BOOK 269 PAGE 630

DIVISION "A" January 5, 1968

Counsel for the Defendant presented a Motion for New Trial, which Motion the Court denied.

APPENDIX J

IN THE CRIMINAL COURT OF RECORD, IN AND FOR DADE COUNTY, FLORIDA

NO. 66-3086

STATE OF FLORIDA,

Plaintiff,

vs.

BERNIE LUDWIG,

Defendant.

NOTICE OF APPEAL

Filed Jan. 5, 1968

J. F. McCracken, Clerk H

BERNIE LUDWIG, Defendant, takes and enters his appeal to the Third District Court of Appeals of Florida to review the judgment and sentence of the Criminal Court of Record of Dade County, Florida, dated the 5th day of January, 1968, and rendered on the same date wherein the Defendant was adjudicated Guilty of the crime of Buying, Receiving or Concealing Stolen Property.

All parties to said cause are called upon to take notice of the entry of this appeal.

/s/ GERALD KOGAN
GERALD KOGAN

Attorney for Defendant
1201 Biscayne Building
Miami, Florida 33130

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was mailed to RICHARD E. GERSTEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida this 5th day of January, 1968.

/s/ GERALD KOGAN
GERALD KOGAN

Filed this 5 day of Jan.
A. D. 1968 and recorded in
Criminal Court of Record,
Minutes No. 269 on Page 475

J. F. McCRAKEN, CLERK
By HELEN H. FISCHER, Deputy

APPENDIX K

IN THE CRIMINAL COURT OF RECORD, IN AND FOR DADE COUNTY, FLORIDA.

NO. 66-3086

STATE OF FLORIDA,

Plaintiff,

vs.

BERNIE LUDWIG,

Defendant.

Filed Jan. 24, 1968

J. F. McCracken, Clerk H

ASSIGNMENTS OF ERROR, DIRECTIONS TO CLERK, DESIGNATION OF NECESSARY PARTS OF TRANSCRIBED TESTIMONY

ASSIGNMENTS OF ERROR

The Defendant, BERNIE LUDWIG, by his undersigned attorney, makes the following Assignments of Error upon which he will rely for reversal of the Verdict, Judgment and Sentence herein:

1. The Court erred in denying the Defendant's Motion to Quash the Information on the grounds of immunity.

2. The Court erred in denying the Defendant's Motion to Suppress all evidence seized from the residence, occupied by the Defendant, known as Apartment 113 of

the San Sebastian Apartments, 333 University Drive, Coral Gables, Dade County, Florida on March 14, 1966.

3. The Court erred in failing to grant the Defendant's Motion to Quash the Search Warrant issued in this cause on March 13, 1966 by the Honorable James Lawrence King, Judge of the Circuit Court in and for Dade County, Florida for the residence known as Apartment 113 of the San Sebastian Apartments, 333 University Drive, Coral Gables, Dade County, Florida.

4. The Court erred in admitting into evidence the property taken from the residence known as Apartment 113 of the San Sebastian Apartments, 333 University Drive, Coral Gables, Dade County, Florida pursuant to the aforementioned search warrant issued by Judge King.

5. The Court erred in failing to grant the Defendant's Motion for a Directed Verdict of Acquittal at the conclusion of the State's case.

6. The Court erred in refusing to grant the Defendant's Motion for a Directed Verdict of Acquittal at the conclusion of all the evidence.

7. The Court erred in denying the Defendant's Motion for a New Trial.

DIRECTIONS TO CLERK

The Defendant, by his undersigned attorney, as and for his Directions to the Clerk in making up the Transcript of Record on Appeal in this case, the following should be included:

1. Information

2. Pleas of Defendant (Minutes)

3. Motion to Quash Information on grounds of immunity

4. Order Denying Motion to Quash Information on grounds of immunity (Minutes)

5. Motion to Suppress

6. Order Denying Motion to Suppress (Minutes)

7. Reporter's Transcript of Testimony on Motion to Suppress to be supplied later

8. Reporter's Transcript of Testimony on Trial to be supplied later

9. Verdict, Judgment and Sentence

10. Motion for New Trial

11. Order Denying Motion for New Trial (Minutes)

12. Notice of Appeal

13. These Assignments of Error and Directions to Clerk

14. All Exhibits introduced at Trial and at Motion to Suppress

DESIGNATION OF NECESSARY PARTS OF TRANSCRIBED TESTIMONY

The Defendant, by his undersigned attorney, as and for his Designation Of Necessary Parts Of Transcribed Testimony, herein, directs that the entire Transcript of

the Trial, together with a Transcript of the Testimony on the Motion to Suppress, be included as part of the original Record herein.

/s/ GERALD KOGAN
GERALD KOGAN
Attorney for Defendant
1201 Biscayne Building
Miami, Florida 33130

I HEREBY CERTIFY that a copy of the above Assignments of Error, Directions to Clerk, Designation of Necessary Parts of Transcribed Testimony, was mailed to RICHARD E. GERSTEIN, State Attorney, 1351 N. W. 12th Street, Miami, Florida this 24th day of January, 1968.

/s/ GERALD KOGAN
GERALD KOGAN

APPENDIX L

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT JULY TERM, A.D. 1968

CASE NO. 68-37

BERNIE LUDWIG,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

Opinion filed November 26, 1968.

An Appeal from the Criminal Court of Record for Dade County, Jack M. Turner, Judge.

Gerald Kogan, for appellant.

Earl Faircloth, Attorney General, and Melvin Grossman, Assistant Attorney General, for appellee.

Before CHARLES CARROLL, C.J., and PEARSON and SWANN, JJ.

PEARSON, Judge.

The appellant was tried by the court and found guilty of knowingly buying, receiving or aiding in the concealment of stolen property in contravention of § 811.16,

Fla.Stat. The evidence admitted at trial was seized at the appellant's apartment by officers armed with a search warrant. On this appeal Ludwig attacks rulings of the trial court which: (1) sustained the validity of the search warrant; (2) sustained the validity of the seizure of property not specifically described in the search warrant.

The issuance of the warrant was based on the affidavit of a Dade County Deputy Sheriff. The deputy swore, among other things, that an inspector of the Tampa Police Department informed him that a named individual had informed him (the inspector) that he had participated in a jewelry theft and thereafter had sold specifically described pieces of jewelry to the appellant at the appellant's apartment in Coral Gables. The deputy made no allegation as to the reliability of the inspector or of the person who had informed the inspector. A circuit court judge issued a search warrant authorizing appropriate law enforcement officers to search the appellant's apartment for specifically described jewelry—the same jewelry which had been specifically described in the affidavit—and to seize it. The affiant deputy and other officers served the search warrant upon the appellant and searched his apartment. They did not find any of the jewelry described in the warrant. However, they did find and seize other property which had not been specifically mentioned in the search warrant but which the officers believed to be stolen property. The appellant's conviction was based on this seized property.

The appellant contends first that:

"AN AFFIDAVIT FOR A SEARCH WARRANT THAT IS BASED UPON INFORMATION RECEIVED FROM AN INFORMANT

MUST ALLEGE THE RELIABILITY OF THE INFORMANT BEFORE A VALID SEARCH WARRANT CAN BE ISSUED."

In United States v. Ventresca, 380 U.S. 102, 85 S.Ct. 741, 13 L.Ed.2d 684 (1965), the Court, through Mr. Justice Goldberg, stated:

> "If the teachings of the Court's cases are to be followed and the constitutional policy served, affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a common-sense and realistic fashion. They are normally drafted by non lawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area. A grudging or negative attitude by reviewing courts toward warrants will tend to discourage police officers from submitting their evidence to a judicial officer before acting.
>
> "This is not to say that probable cause can be made out by affidavits which are purely conclusory, stating only the affiant's or an informer's belief that probable cause exists without detailing any of the 'underlying circumstances' upon which that belief is based. See Aguilar v. Texas . . . . Recital of some of the underlying circumstances in the affidavit is essential if the magistrate is to perform his detached function and not serve merely as a rubber stamp for the police. However, where these circumstances are

> detailed, **where reason for crediting the source of the information is given,** and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." (Emphasis added.) 380 U.S. at 108, 109.

We conclude that the portion of the foregoing statement we emphasized does not require an affiant to allege that his informant is reliable because the affidavit involved in the Ventresca case (Appendix, 380 U.S. at 112-116) does not include such an allegation. We therefore hold that a valid search warrant may be issued even though the affidavit upon which it is based does not include an allegation that the affiant has received his information from a reliable source. We think the requisite "reason for crediting the source of the information" may be inferred from the allegations in the affidavit and the other circumstances of a given case. Cf. Wooten v. United States, 380 F.2d 230 (5th Cir. 1967), cert. denied, 389 U.S. 942.

The next point concerns the legality of the seizure of the property not mentioned in the search warrant. As a general rule, law enforcement officers may not lawfully seize property unless it is specifically described in a search warrant as being the object of the search

and seizure. The appellant recognizes that contraband (e.g., narcotics, gambling paraphernalia, stolen goods) is a class of property excepted from this rule. He argues that before law enforcement officers may classify goods as being stolen property, hence contraband, and hence subject to the exception to the general rule, they must **know** that the goods are stolen. We cannot agree.

A law enforcement officer may lawfully seize a person without an arrest warrant "When he has reasonable ground to believe that a felony has been . . . . committed and reasonable ground to believe that the person to be arrested has committed . . . it." §901.15(3), Fla.Stat. If a law enforcement officer may lawfully seize a person without **knowing** that he has committed a felony or that a felony has in fact been committed, the officer may surely seize property without **knowing** it is stolen, if he has probable cause (or reasonable ground)[1] to believe it is stolen property. It is inconceivable that the law provides greater protection to the property of an individual than it does to his liberty. We therefore hold that a law enforcement officer conducting a search under a valid warrant may lawfully seize property not specifically described in the warrant if he has probable cause to believe it to be stolen property. He does have such probable cause if a reasonable man knowing all the facts the officer knows would believe under all the circumstances that the property is stolen property. See Rogers v. State, 158 Fla. 582, 30 So.2d 625 (1947).

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[1]The terms are synonymous. See Carroll v. United States, 267 U.S. 132, 161 (1925).

The following excerpt from a pre-trial hearing clearly demonstrates that the officers in the case before us had probable cause to believe the property seized at the appellant's apartment was stolen property:

"Q [By Defense Counsel] Why did you take that property which was not described in your warrant?

A The reason we took this property and impounded it is because there was a large quantity of items among the property which bore initials or names which were not either the name of the person in whom the apartment was listed, H. L. Sadaka, or—excuse me—A. V. Sadaka or, the occupant, Bernie Ludwig and, therefore, we felt that we had probable cause or reason to believe that this property was stolen.

"There were also a large quantity of silverware and fur coats. Among the fur coats there were items which had out-of-town addresses or labels. Some had no labels. Some had the names or initials of other persons which were not the same as those of either Sadaka or Ludwig, including one which is listed on page 8, a light and dark brown fur-type jacket, with brown lining and flowered design with initials, 'M. R. W.', bearing label of Kreuger's, New Orleans.

"We had reason to believe that possibly this might be the same as taken from a burglary which occurred in New Orleans on February 11, 1966, at the residence of Joseph Steiner and we seized it for the purpose of identification."

Affirmed.

APPENDIX M

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT, JULY TERM, A. D. 1968,
THURSDAY, DECEMBER 19, 1968

CASE NO. 68-37

BERNIE LUDWIG,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

Counsel for appellant having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

A True Copy

ATTEST:
WILLIAM P. CARTER
Clerk District Court of
Appeal, Third District

cc: Gerald Kogan
Melvin Grossman
J. F. McCracken

(THE MANDATE IN THE ABOVE STYLED CAUSE HAS TODAY BEEN ISSUED AND MAILED TO THE CLERK OF THE CRIMINAL COURT OF RECORD FOR DADE COUNTY, FLORIDA)

APPENDIX N

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1969

TUESDAY, APRIL 29, 1969

CASE NO. 38,178
DISTRICT COURT OF APPEAL,
THIRD DISTRICT

BERNIE LUDWIG,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy

TEST:
Sid J. White
Clerk Supreme Court.

CC: Hon. W. P. Carter
Hon. J. F. McCracken
Hon. Gerald Kogan
Hon. Earl Faircloth, Tallahassee
Hon. Melvin Grossman, Miami

APPENDIX O

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM A. D. 1969

THURSDAY, JUNE 12, A.D. 1969

CASE NO. 38,178

BERNIE LUDWIG,

Petitioner

vs.

STATE OF FLORIDA,

Respondent

Petition for rehearing filed by Attorney for Petitioner has been considered and is hereby denied.

A TRUE COPY,

TEST:
SID J. WHITE
CLERK SUPREME COURT
ELLA ONIELL WILKINS
Chief Deputy Clerk

(I HAVE TODAY MAILED TO THE CLERK OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, ORDER OF APRIL 29, A.D. 1969 IN THE ABOVE CAUSE)